

UNITED STATES BANKRUPTCY COURT  
DEPARTMENT 1  
**JUDGE MARGARET M. MANN, PRESIDING**  
**THURSDAY, APRIL 9, 2015**

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**10:00 AM**

**1 - 14-01980-MM    Ch 13   GERALD DEAN & JOSEPHINE KEELER**

MOTION FOR RELIEF FROM STAY, RS #ASW-1 FILED BY WELLS FARGO BANK

ATTORNEY: HAROLD D. THOMPSON (GERALD & JOSEPHINE KEELER)  
ATTORNEY: DANIEL K. FUJIMOTO (WELLS FARGO BANK)

**2 - 14-07363-MM    Ch 13   MARK H HANSON**

MOTION FOR RELIEF FROM STAY, RS #PD-1 FILED BY U.S. BANK

ATTORNEY: YURI SIMPSON (MARK HANSON)  
ATTORNEY: MEGAN LEES (U.S. BANK)

**3 - 15-01355-MM    Ch 7   U.S. ENTERTAINMENT, LLC**

MOTION FOR RELIEF FROM STAY, RS #RCT-1 FILED BY SUNSET LENDING MANAGEMENT, LLC

ATTORNEY: ANDREW J. MILLER (U.S. ENTERTAINMENT, LLC)  
ATTORNEY: ROBERT C. THORN (SUNSET LENDING MANAGEMENT, LLC)

**4 - 15-01517-MM    Ch 13   ROLANDO OMERO & OPHELIA MENESES BOADO**

MOTION TO EXTEND AUTOMATIC STAY FILED BY DEBTORS

**Tentative Ruling:** Motion to Extend Automatic Stay is GRANTED. The Court finds that there is not a presumption of bad faith because Debtors had previously filed only one other bankruptcy petition within the preceding year that was dismissed because due to failure to respond to an objection to confirmation. The Debtors are proposing a 100% plan. See 11 U.S.C. § 362(c)(3)(C)(i)(III)(bb). Per unopposed motion, the Debtors have established that this chapter 13 petition was filed in good faith. Appearances are excused and counsel may upload an order.

ATTORNEY: RICHARD E. CHANG (ROLANDO & PHELIA BOADO)

**10:00 AM**

**5 - 15-00031-MM Ch 7 MARY J. PETTY**

TELE

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13 FILED BY DEBTOR

**Court Deputy Note:** CONTINUED TO 4/28/15 @ 2:00 PM, BY STIPULATION

**Tentative Ruling:** The Court is most concerned that, if converted, it is improbable that the Debtor will be able to create a feasible chapter 13 plan. The court may deny a conversion from chapter 7 to chapter 13 when it is clear from the circumstances that the debtor lacks the ability to create a feasible chapter 13 plan and that, because of this, conversion is "an exercise in futility." See *In re Glenn*, 408 B.R. 800, 803 (Bankr. E.D. Mo. 2009) (quoting *In re Lilley*, 29 B.R. 442 (Bankr. 1st Cir.1983)); see also *In re Tardiff*, 145 B.R. 357, 360 (Bankr.D.Me.1992) ("Conversion need not be permitted when it serves no point"); *In re Pakuris*, 262 B.R. 330, 337 (Bankr. E.D. Pa. 2001) ("Courts have recognized that conversion should not be permitted when it would serve no point, for example, in matters when the debtor is demonstrably incapable of proposing a feasible plan"). In some cases, the filing of an unfeasible plan can even amount to bad faith on the part of the debtor. *In re Straugh*, 41 B.R. 757, 758 (Bankr.W.D.Pa.1984) (denying conversion motion for lack of good faith, because the chapter 13 plan was not feasible). In *In re Ponzini*, 277 B.R. 399 (Bankr. E.D. Ark. 2002), the court denied a debtor's motion to convert when no plan had even been filed, when it was "clear from [the] Debtor's schedules that he ha[d] no disposable income with which to fund a Chapter 13 plan." *Id.* at 406. The court noted the fact that the debtor's monthly expenses exceeded his monthly income, and found that this suggested the debtor was attempting to convert in order to "stall collection efforts by his creditors." *Id.*

*As explained in Marrama v. Citizens Bank*, 549 U.S. 365, 374-75 (2007):

The broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.

549 U.S. at 375. To put simply, if a successful conversion will foreseeably be reconverted because of the lack of a feasible chapter 13 plan, the Court may simply deny the original motion to convert under the applicable authority.

The evidence before the Court is that a Chapter 13 plan would not be feasible. Debtor submitted Schedules I and J which show no disposable income with which to fund a chapter 13 plan. Schedule I reflects a total monthly income of \$3,324, and Schedule J indicates that Debtor's total monthly expenses are \$4753 (and will shortly increase by an additional \$4,309) - thus leaving Debtor with no monies to make payments as required in each and every confirmable chapter 13 plan. As such, there is no indication that Debtor can fund a chapter 13 plan and the Court will not convert this case unless Debtor can produce evidence to support feasibility. The reliability of the monthly \$1,500 earned from rental activity is also unclear given that Debtor is also receiving \$1,824 in social security payments.

Debtor is to file a declaration and a proposed Chapter 13 plan to determine whether conversion is feasible in light of Debtor's Schedules reflecting that her income exceeds her expenses before the hearing.

OTHER: MARY PETTY

**10:00 AM**

**6 - 15-00514-MM Ch 7 ADRIANA H. HAM**

REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND CAPITAL ONE  
AUTO FINANCE

ATTORNEY: KYLE E. PIETRZAK (ADRIANA HAM)

**7 - 15-00752-MM Ch 7 MEDARDO N. & LESLIE JOY P. DE LIRA**

REAFFIRMATION AGREEMENT BETWEEN DEBTORS AND BEN BRIDGE  
JEWELERS

**Tentative Ruling:** Based on the Debtor's declaration, the Court approves the Reaffirmation Agreement. The Court will prepare its own order. Appearances are excused.

ATTORNEY: THOMAS S. ENGEL (MEDARDO & LESLIE DE LIRA)

**11:00 AM**

**1 - 12-15328-MM Ch 11 PB REDELL, INC.**

- 1) CONFIRMATION HEARING ON CHAPTER 11 PLAN (fr. 4/2/15)
- 2) MOTION FOR APPROVAL OF DISCLOSURE STATEMENT FILED BY DEBTOR (fr. 4/2/15)
- 3) MOTION FOR APPROVAL OF CHAPTER 11 PLAN FILED BY DEBTOR (fr. 4/2/15)

US TRUSTEE: DAVID A. ORTIZ  
ATTORNEY: JOHN L. SMAHA (PB REDELL, INC.)  
ATTORNEY: KIT J. GARDNER (PG FUND 1)  
ATTORNEY: JEAN M. HEINZ (POTENTIAL BUYERS)

**02:00 PM**

**1 - 14-00066-MM Ch 11 PATRICK ALLEN JOHANNES**

- 1) APPLICATION TO EMPLOY RIBET & SILVER AS SPECIAL LITIGATION COUNSEL FOR THE DEBTOR

**Court Deputy Note:** OFF CALENDAR BY SUBMISSION OF A STIPULATION

**Tentative Ruling:** The Court finds the objections of the United States Trustee to be well founded. While Debtor has addressed that payment of the proposed fees to special counsel is appropriate because counsel concedes the duty of loyalty is owed only to Debtor, the other issues need to be resolved, the other issues need to be resolved before the Court can approve the employment. If these issues can be resolved before the hearing, the Court will take the matter off calendar and excuse appearances.

- 2) APPLICATION TO EMPLOY STEPHEN JONES AS DEBTORS EXPERT WITNESS

**Court Deputy Note:** OFF CALENDAR BY SUBMISSION OF A STIPULATION

**Tentative Ruling:** The United States Trustee's opposition is well taken at least to the extent it notes that notice to all creditors is required by law. The Court will entertain an application for an order shortening time to give such notice if necessary.

ATTORNEY: HOWARD MADRIS (PATRICK JOHANNES)

**02:00 PM**

**2 - 14-04949-MM Ch 11 TIM M. BELNAP, DDS**

APPLICATION FOR ORDER TO SHOW CAUSE WHY DEBTOR, AND ITS PRINCIPAL SHOULD NOT BE HELD IN CONTEMPT AND/OR HAVE CASE DISMISSED AND BE SANCTIONED FOR FAILURE TO COMPLY WITH COURT ORDER (fr. 2/26/15)

**Tentative Ruling:** Off-calendar; The Order to Show Cause will be held April 30, 2015 at 2:00 p.m. Docket #181. Appearances are excused.

ATTORNEY: JOHN L. SMAHA (TIM BELNAP, DDS)

**3 - 14-08030-MM Ch 11 SHIVA-OM, INC.**

FIRST INTERIM APPLICATION FOR COMPENSATION & REIMBURSEMENT OF EXPENSES FOR ANDREW GRIFFIN, ATTORNEY FOR DEBTOR

**Court Deputy Note:** OFF CALENDAR AS PARTIES HAVE SUBMITTED ON THE TENTATIVE RULING

**Tentative Ruling:** The Court having considered the Application for Final Professional Compensation (the "Application") filed by Andrew H. Griffin III, Attorney for Debtor, for fees of \$23,897.50 and expenses of \$1,087.41, the Application is granted. The creditor SGB objected to the fees being paid out of cash collateral, and consistent with *Gold Coast Asset Acquisition, L.P. v. 1221 Veteran Street Co. (In re Veteran Street)*, 144 F.3d 1288, 1292 (9th Cir. 1998), the Court finds that the Debtor may not pay its attorney's fees out of SBG's cash collateral without consent from SGB. If there is an alternative source of funds, Debtor may pay counsel from that. Unless both parties call each other and the Courtroom Deputy at 619-557-7407 by April 8, 2015 at 3:00 p.m., the Court will hear this matter.

ATTORNEY: ANDREW H. GRIFFIN (SHIVA-OM, INC.)